

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-PM-14820-DFM
)	
CARLA RUTH McBEATH)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION; DISCIPLINE
Member No. 106047)	RECOMMENDATION; INVOLUNTARY
)	INACTIVE ENROLLMENT ORDER.
<u>A Member of the State Bar.</u>)	

INTRODUCTION

On June 28, 2012, the Office of Probation of the State Bar of California (Office of Probation) filed a motion to revoke the probation of respondent Carla Ruth McBeath (Respondent). Although she was properly served with the motion to revoke probation by certified mail, return receipt requested, and by regular mail at her State Bar membership records address, Respondent did not participate in this proceeding. On August 2, 2012, this court issued an order submitting the motion for decision, serving Respondent with a copy of that order.

Good cause having been shown, the motion to revoke Respondent's probation is granted and discipline is recommended as set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Violation of Conditions of Probation

On September 15, 2010, the California Supreme Court filed an order, S184624, accepting the State Bar Court's discipline recommendation in case no. 09-O-12473, in which Respondent stipulated – in a single-client matter – to failing to perform legal services with competence, failing to keep a client reasonably informed of significant developments, and failing to refund an

unearned fee.¹ The discipline included a one year stayed suspension and three years' probation. This order was properly served on Respondent and became effective on October 15, 2010.² A copy of the stipulation and this court's order approving same had previously been properly served on Respondent on May 4, 2010.

On October 21, 2010, and May 9, 2012, the Office of Probation sent Respondent reminder letters regarding the probation conditions at her official address. Neither letter was returned as undeliverable or for any other reason.

From February 2011 through February 2012, Respondent and her probation deputy communicated regularly by telephone and email, regarding the terms and conditions of her disciplinary probation. On October 24, 2011, Respondent filed a motion to modify the terms of her probation. On October 28, 2011, the court granted her motion, extending her time to complete her ordered MCLE and deferring her October 1, 2011 restitution payment.

Despite these efforts to make Respondent aware of the conditions of her probation and to secure her compliance with them, Respondent did not comply with the following probation conditions:

(a) Respondent was ordered to contact the Office of Probation within 30 days from the effective date of her discipline, by November 14, 2010, to schedule a meeting to discuss the terms and conditions of her probation. Respondent did not contact the Office of Probation to schedule her meeting until February 7, 2011.

(b) During the period of probation, Respondent was required to submit written quarterly reports to the Office of Probation on January 10, April 10, July 10, and October 10 of each year,

¹ The court judicially notices Respondent's prior disciplinary record.

² In the absence of evidence to the contrary, the court finds that the Clerk of the Supreme Court performed his or her duty by transmitting a copy of the Supreme Court's order to Respondent immediately after its filing. (Rule 8.532(a), Cal. Rules of Court; Evid. C. §664; *In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.)

or part thereof during which the probation was in effect, stating under penalty of perjury that she had complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period. Respondent filed her January 10, 2011 quarterly report 43 days late, filed her July 10, 2011 quarterly report 1 day late, and did not file her April 10, 2012 quarterly report.

(c) Respondent was ordered to provide the Office of Probation satisfactory proof of completion of six hours of MCLE approved courses in legal ethics within one year of the effective date of her discipline, by October 15, 2011. This condition was subsequently extended to April 15, 2012. Despite the extension, Respondent did not provide the Office of Probation proof of completion of her MCLE hours by April 15, 2012.³

(d) During the period of probation, Respondent was to pay restitution to Ali B. Zoumari (or the Client Security Fund) in the amount of \$2,600, plus interest accruing from March 1, 2006. Respondent was ordered to pay a minimum of \$300 quarterly and provide satisfactory proof of payment to the Office of Probation with each quarterly report. Respondent filed her April 10, 2011 proof of payment 16 days late, her July 10, 2011 proof of payment 58 days late, and her January 10, 2012 proof of payment 24 days late. In addition, Respondent did not file her January 10, 2011 or April 10, 2012 proof of payment.

Aggravating Circumstances

Prior Discipline

Respondent's prior record of discipline is a factor in aggravation. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,⁴ std. 1.2(b)(i).) Respondent has one prior imposition of discipline.

³ There is no indication in the record that Respondent has since provided the Office of Probation proof of completion of any of her six hours of required MCLE.

⁴ Future references to standard or std. are to this source.

In the underlying matter, the Supreme Court, on September 15, 2010, filed an order in case no. S184624 (State Bar Court case no. 09-O-12473) suspending Respondent from the practice of law for one year, stayed, with a three-year period of probation. This matter involved failing to perform legal services with competence, failing to keep a client reasonably informed of significant developments, and failing to refund an unearned fee. In mitigation, Respondent cooperated with the State Bar, was suffering from severe financial stress at the time of some of the misconduct, and had no prior record of discipline. In aggravation, Respondent's misconduct caused her client significant financial harm.

Multiple Acts of Misconduct

Respondent's numerous violations of the terms of her disciplinary probation constitute multiple acts of misconduct. (Std. 1.2(b)(ii).)

Mitigating Circumstances

It was Respondent's burden to establish mitigating factors. No mitigating factors were shown by the evidence presented to this court.

DISCUSSION

The extent of the discipline to be recommended is dependent, in part, on the seriousness of the probation violation, the member's recognition of the misconduct, and the member's prior efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) Having considered these factors and the Office of Probation's contentions, the court concludes that actual suspension for one year, as requested, is both required and sufficient to protect the public in this instance. Respondent was aware of the terms and conditions of her disciplinary probation, yet did not comply with them despite reminders from the Office of Probation. Her failure to participate in this proceeding is also a matter of considerable concern to this court.

RECOMMENDED DISCIPLINE

Actual Suspension

The court recommends that the probation of respondent Carla Ruth McBeath, previously ordered in Supreme Court case matter S184624 (State Bar Court case no. 09-O-12473), be revoked; that the previous stay of execution of the suspension be lifted; and that Respondent be suspended from the practice of law for one year, and she will remain suspended until she makes restitution to Ali B. Zoumari in the amount of \$2,600 plus 10% interest per annum from March 1, 2006 (or to the Client Security Fund to the extent of any payment from the fund to Ali B. Zoumari, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation.⁵

It is further recommended that if Respondent is actually suspended for two years or more, she must remain suspended until she provides proof to the satisfaction of the State Bar Court of her rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii).

Probation

It is recommended that Respondent be placed on probation for three years, with the following conditions:

1. During the period of probation, Respondent must comply with the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
2. Within 10 days of any change, Respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California 94105-1639, **and** to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

⁵ The evidence before the court demonstrates that Respondent has already provided the Office of Probation with satisfactory proof of some payments to Ali B. Zoumari. Respondent is to receive credit for those payments.

3. Within 30 days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with her assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request;
4. Respondent must submit written quarterly reports to the State Bar's Office of Probation (Office of Probation) on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than 30 days, the report must be submitted on the next following quarter date, and cover the extended period.

In addition to all the quarterly reports, a final report, containing the same information is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probationary period;
5. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to her personally or in writing, relating to whether she is complying or has complied with the conditions contained herein;
6. Within one year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of completion of six hours of MCLE approved courses in legal ethics; and
7. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.⁶

Rule 9.20

It is also recommended that the Supreme Court order Respondent to comply with rule 9.20(a) of the California Rules of Court within 30 calendar days after the effective date of the Supreme Court order in the present proceeding and to file the affidavit provided for in rule 9.20(c) within 40 calendar days after the effective date of the order showing Respondent's compliance with said order.⁷

⁶ Ethics School is not recommended because Respondent resides in New Jersey.

⁷ Respondent is required to file a rule 9.20(c) affidavit even if she has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

MPRE

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination as she is already subject to an order to do so, issued by the Supreme Court in its order S184624.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in section 6140.7 and as a money judgment.

ORDER REGARDING INACTIVE ENROLLMENT

Respondent is ordered to be involuntarily enrolled inactive under Business and Professions Code section 6007, subdivision (d)(1).⁸ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: September ____, 2012

DONALD F. MILES
Judge of the State Bar Court

⁸ Any period of involuntary inactive enrollment will be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)